Filed 1/31/19 Castrejon v. CCS Orange County Janitorial, Inc. CA4/3

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

MIREYA CASTREJON, Plaintiff and Respondent, v. CCS ORANGE COUNTY JANITORIAL, INC., Defendant and Appellant.	G055759 (Super. Ct. No. 30-2017-00920076) O P I N I O N

Appeal from an order of the Superior Court of Orange County, William D. Claster, Judge. Affirmed.

Lewis Brisbois Bisgaard & Smith, Jeffrey S. Ranen, William C. Sung and Hillary M. Burrelle for Defendant and Appellant.

Aegis Law Firm, Kashif Haque, Samuel A. Wong, Jessica L. Campbell and Ali S. Carlsen for Plaintiff and Respondent.

* * *

INTRODUCTION

In this wage and hour action, CCS Orange County Janitorial, Inc. (CCS Orange County) filed a motion to compel plaintiff Mireya Castrejon to submit her claims to arbitration based on evidence Castrejon signed a binding arbitration agreement at the commencement of her employment with CCS Orange County. The trial court denied the motion. CCS Orange County contends the court erred by concluding CCS Orange County was not a party to the arbitration agreement and could not enforce that agreement against Castrejon.

We affirm. The general rule is that one must be a party to an arbitration agreement to invoke it. The arbitration agreement provides that Castrejon agreed to submit any claims she had against CCS Orange County's parent company to binding arbitration. CCS Orange County is not a party to the arbitration agreement and failed to show the applicability of any exception to the general rule. The motion to compel was properly denied.

BACKGROUND

In May 2017, Castrejon, individually and on behalf of others similarly situated, filed a class action complaint containing claims for (1) failure to pay wages; (2) failure to provide meal periods; (3) failure to permit rest breaks; (4) failure to provide accurate itemized wage statements; (5) failure to pay all wages due upon separation of employment; (6) failure to reimburse necessary business expenses; and (7) violation of Business and Professions Code section 17200 et seq. The complaint's caption identifies CCS Orange County as the only named defendant. The body of the complaint, however, solely identifies an entity named "Personal Touch Cleaning & Maintenance, Inc." as the defendant and employer of Castrejon and the other putative class members. CCS Orange County is not mentioned in the body of the complaint.

CCS Orange County filed an answer to the complaint. In September 2017, the parties stipulated to Castrejon filing a first amended complaint to add a cause of action under the Labor Code Private Attorney General Act of 2004 (PAGA) (Lab. Code, § 2699, subd. (a)).

CCS Orange County thereafter filed a motion to compel arbitration, dismiss class claims, and stay the PAGA claim. The motion was supported by the declaration of CCS Orange County's administrative assistant, Emely Villegas. In her declaration, Villegas stated that "[o]n January 19, 2016, [Castrejon] went through the CCS [Orange County's] new hire procedures . . . and signed an Arbitration Agreement." On that same day, Villegas reviewed and "signed off" on Castrejon's new hire packet, including the arbitration agreement. A copy of Castrejon's signed arbitration agreement was attached as "Exhibit C" to Villegas's declaration.

Exhibit C is a two-page agreement entitled "Pacific Building Care, Inc. dba Commercial Cleaning Systems Agreement for Binding Arbitration of Disputes." The agreement begins: "The Employer and Employee agree that any dispute, controversy or claim between them, including all those arising out of or related to the employment relationship . . . to the extent the law provides Claims may be arbitrated, shall at the request of either the Employee or Employer be submitted to and settled by binding arbitration." The agreement further states: "Such arbitration shall include any Claims you have against Employer or any of its owners, managers, directors, supervisors or agents." The final paragraph of the agreement states: "I knowingly and voluntarily agree to submit and settle any dispute, controversy or claim WITH MY EMPLOYER, INCLUDING THOSE arising out of OR RELATED TO my employment relationship with my employer (and other persons listed above) to BINDING arbitration as described above. I agree that the arbitration of all issues, including the determination of any amount of damages suffered, shall be final and binding to the maximum extent permitted by law. I realize by AGREEING TO ARBITRATION, I will have waived my right to

trial by jury. THIS POLICY CANNOT CHANGE EXCEPT BY WRITTEN agreement BETWEEN MYSELF AND my employer." (Capitalization in original.)

Castrejon's name appears above the line designated "Employee signature." Unidentified initials appear on the line identified as the "Authorized Signature" for "Pacific Building Care, Inc., dba Commercial Cleaning Systems (Employer)."

Castrejon filed an opposition to the motion to compel, arguing CCS Orange County failed to meet its burden to establish the existence of a valid arbitration agreement between the parties because CCS Orange County is not a party to the proffered arbitration agreement and failed to properly authenticate it. She also argued both CCS Orange County did not prove mutual assent and that the agreement was procedurally and substantively unconscionable.

In reply, CCS Orange County offered the declaration of its vice president of operations, Cameron Hall, in which Hall stated that CCS Orange County is a wholly-owned subsidiary of Pacific Building Care, Inc. Hall stated that that the arbitration agreement Castrejon signed when she was hired "was distributed by Pacific Building Care, Inc. to its subsidiaries, such as CCS [Orange County]." CCS Orange County also offered the supplemental declaration of Villegas in which she stated that what appear to be initials on the line for Pacific Building Care, Inc.'s authorized signature is the signature of Dana Holladay, who is identified as "Senior Vice President in charge of CCS [Orange County]."

The trial court denied the motion to compel arbitration. The court's minute order explained: "The arbitration agreement in this case is between [Castrejon] and Pacific Building Care dba Commercial Cleaning Systems, the parent company of [Castrejon's] employer. The agreement does not provide for arbitration of [Castrejon's] claims against a subsidiary of the parent company or any other related or affiliated entities, as is often the case. Significantly, CCS Orange County fails to set forth any case law which supports extending an arbitration provision to a non-signatory subsidiary

company in a similar factual setting." Noting that "[i]nitially, CCS Orange County has met its burden of establishing that there exists an agreement to arbitrate involving [Castrejon]," the court stated that "[t]he burden then shifted to [Castrejon] 'to demonstrate that an arbitration clause *cannot* be interpreted to require arbitration of the dispute'" and that Castrejon met that burden. The court stated: "She signed the arbitration agreement as 'Employee,' and the 'Employer' is identified as 'Pacific Building Care, Inc. dba Commercial Cleaning Systems.' [Citation.] There is no contention from either party that Pacific Building Care is [Castrejon's] employer, nor is it a defendant in this action. As noted above, the defendant is 'CCS Orange County Janitorial, Inc.' Significantly, there is no reference to this employer—either by its name or by its corporate form—in the agreement."

The court further explained: "The general rule is that 'one must be a party to an arbitration agreement to be bound by it or invoke it' [citation]. Although CCS Orange County asserts that it is a wholly-owned subsidiary of Pacific Building Care, '[c]orporate entitles are presumed to have separate existences, and the corporate form will be disregarded only when the ends of justice require this result. [Citations.] In particular, there is a strong presumption that a parent company is not the employer of its subsidiary's employees. [Citations.] Accordingly, CCS Orange County is not a party to the arbitration agreement. [¶] There are limited exceptions to the general rule that one must be a party to invoke an arbitration agreement: 'there are six theories by which a nonsignatory may be bound to arbitrate: (a) incorporation by reference; (b) assumption; (c) agency; (d) veil-piercing or alter ego; (e) estoppel; and (f) third-party beneficiary.' [Citation.] [Castrejon] raised this issue in her Opposition, arguing that agency and third-party beneficiary theories do not apply. [Citation.] In reply, CCS Orange County did not argue any of these theories and therefore has failed to show that any of them apply in this case. [¶] In light of the foregoing, the Court need not reach the merits of the parties' other arguments."

CCS Orange County appealed from the order denying its motion to compel arbitration.

DISCUSSION

"[W]hen a petition to compel arbitration is filed and accompanied by prima facie evidence of a written agreement to arbitrate the controversy, the court itself must determine whether the agreement exists and, if any defense to its enforcement is raised, whether it is enforceable. Because the existence of the agreement is a statutory prerequisite to granting the petition, the petitioner bears the burden of proving its existence by a preponderance of the evidence." (*Rosenthal v. Great Western Fin. Securities Corp.* (1996) 14 Cal.4th 394, 413.)

"'There is a strong federal policy in favor of arbitration agreements. [Citations.] Questions of arbitrability are to be addressed with regard to that policy. [Citations.]' [Citation.] Despite this strong policy for contractual arbitration, however, the general rule is 'one must be a party to an arbitration agreement to be bound by it or invoke it.'" (*Garcia v. Pexco, LLC* (2017) 11 Cal.App.5th 782, 785.)

In moving to compel arbitration, CCS Orange County produced evidence that Castrejon signed an arbitration agreement. At the hearing on the motion to compel arbitration, the trial court stated "there's no doubt in my mind that [Castrejon] signed an arbitration agreement" although the court also expressed some doubt as to whether Castrejon understood what she was signing. The court, however, concluded it did not need to reach the issue whether Castrejon assented to the agreement because the agreement she signed provided that she agreed to arbitrate any claims she might have against Pacific Building Care, Inc.—an entity Castrejon did not name as a defendant and which is not a party in this lawsuit. As pointed out in the trial court's minute order, CCS Orange County is not referenced in any manner in the arbitration agreement; that agreement does not include Castrejon's agreement to arbitrate any claims she might have

against CCS Orange County.[1] According to the general rule, as a nonparty to the arbitration agreement, CCS Orange County cannot invoke the arbitration agreement to compel the arbitration of Castrejon's claims.

We acknowledge that both California and federal courts have recognized limited exceptions to the rule that one must be a party to an arbitration agreement to invoke it, "allowing nonsignatories to an agreement containing an arbitration clause to compel arbitration of, or be compelled to arbitrate, a dispute arising within the scope of that agreement." (*DMS Services, LLC v. Superior Court* (2012) 205 Cal.App.4th 1346, 1353.) Those exceptions include incorporation by reference, assumption, agency, veil-piercing or alter ego, estoppel, and third-party beneficiary status. (*Ibid.*) "These exceptions to the general rule that one must be a party to an arbitration agreement to invoke it or be bound by it 'generally are based on the existence of a relationship between the nonsignatory and the signatory, such as principal and agent or employer and employee, where a sufficient "identity of interest" exists between them.'" (*Ibid.*)

CCS Orange County did not argue the applicability of any of these exceptions in the trial court. While the record shows Pacific Building Care, Inc. is the parent company of CCS Orange County, no evidence was produced and no argument was made showing that the relationship between those two separate corporate entities with respect to Castrejon would support the application of an exception.

At the hearing on the motion to compel arbitration, the trial court gave counsel the opportunity to explain how the arbitration agreement is enforceable by CCS

---

[1] CCS Orange County is not a named defendant in this action either. Although named as the sole defendant in the caption of both the complaint and the first amended complaint, nowhere in the body of either version of the complaint is CCS Orange County ever mentioned. Instead, all of Castrejon's claims are alleged against "Personal Touch Cleaning & Maintenance, Inc." The existence of this significant pleading error provides further support for the denial of the motion to compel to arbitration claims that have not been alleged against the moving party.

Orange County as to Castrejon's claims, stating: "I looked really carefully at the arbitration agreement—because I've seen a lot of these and I figured, well, somewhere in there it must say 'parent and all related entities or affiliated entities,' which in my mind would be enough to compel arbitration. I couldn't find it. [¶] And then I looked at the defendant or moving party's papers, and I didn't see any case—I couldn't find a case that allows me to say: well, even though it's a parent, we will just say it also applies to the subsidiary. I didn't find any cases that say that." The court also pointed out the potential legal consequences of treating a parent and subsidiary as one entity in this context in the following discussion with CCS Orange County's counsel.

"The Court: . . . Assume for the moment that [Castrejon] was able to obtain a large judgment against the subsidiary, the Orange County subsidiary. Do you believe that would also then be recoverable from the parent? Is that your position? They are all one and the same?

"[CCS Orange County's counsel]: I don't necessarily know that, your Honor.

"The Court: I would be stunned if you said yes, because there would be no reason then to have separate corporations.

"So the second question I have for you is this, which is—is there any authority for what you've just said? In other words, that the court can essentially ignore the separate corporations and say: Come on, you must have known that the arbitration agreement was with this entity, not the one on the paper?

"[CCS Orange County's counsel]: I mean, I think going to your specific point, no. But I think this is an issue of sort of apparent agency or apparent authority.

"The Court: What do you mean by that? Apparent agency usually has to do with an individual acting in a—acting in somebody's capacity, on behalf of someone else.

"I guess you're saying that the parent is acting as the agent of the subsidiary?"

CCS Orange County's counsel's argument concluded: "Actually, I think it's the reverse of that, that the subsidiary would be acting as the agent here because they are the one presenting the agreement."

CCS Orange County did not provide evidence or legal authority showing the existence of any agency relationship and/or third party beneficiary relationship between CCS Orange County and its parent corporation much less showing how any such relationship fit into one of the exceptions to the general rule. CCS Orange County similarly failed to argue in the trial court that any exception applied in this case.

At oral argument on appeal, CCS Orange County argued Castrejon is equitably estopped from avoiding arbitration as a matter of law. Equitable estoppel, however, is generally a question of fact. (*Molecular Analytical Systems v. Ciphergen Biosystems, Inc.* (2010) 186 Cal.App.4th 696, 708.) CCS Orange County's counsel argued that the facts presented in connection with the motion to compel arbitration were undisputed, thereby making the issue of whether equitable estoppel applied a question of law that this court may address in the first instance. (*Ibid.* [equitable estoppel becomes a question of law "'when the facts are undisputed and only one reasonable conclusion can be drawn from them'"].)

Even if the facts in our record regarding the motion to compel arbitration are undisputed, because CCS Orange County did not argue equitable estoppel below, Castrejon did not have the opportunity to put forth additional evidence in opposition to the equitable estoppel argument. The trial court, in turn, did not have the opportunity to make findings on that issue based on a complete factual record and ultimately rule on the applicability of equitable estoppel in enforcing the arbitration agreement against Castrejon in this case. Consequently, because of CCS Orange County's failure to raise

this issue below, we are not in a position to determine the applicability of equitable estoppel in the first instance as a matter of law.

Because we conclude the trial court properly denied the motion to compel arbitration on the ground CCS Orange County was not a party to the agreement and no exception to the general applied, we do not reach Castrejon's other arguments challenging the enforceability of the arbitration agreement.

DISPOSITION

The order is affirmed. Respondent shall recover costs on appeal.

FYBEL, J.

WE CONCUR:

MOORE, ACTING P. J.

THOMPSON, J.